

1 JUDGE ROBERT J. BRYAN
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 UNITED STATES OF AMERICA,) No. CR15-5351RJB
11 Plaintiff,)
12 v.) CERTIFICATION OF COMPLIANCE
13 JAY MICHAUD,) TO CrR 16 IN SUPPORT OF THIRD
14 Defendant.) MOTION TO COMPEL DISCOVERY

15 COLIN FIEMAN, hereby certifies that:

16 The facts alleged in the Third Motion and Memorandum in Support of Motion to
17 Compel Discovery are true and correct;

18 1. On September 9, 2015, the defense requested a copy of the programming
19 code for the “Network Investigative Technique” (NIT) that was deployed on Mr.
20 Michaud’s computer. The Government declined to produce the code.

21 2. On November 20, 2015, the defense filed its First Motion to Compel
22 Discovery (Dkt. 54). The Court scheduled a hearing on the motion for December 14,
23 2015.

24 3. On December 10, 2015, the Government notified the defense that it was
25 withdrawing its objection to disclosing the NIT code.

4. On January 5, 2016, the Government filed a Stipulated Motion for Entry of Discovery Protective Order for the NIT code (Dkt. 96). The Court issued an NIT data protective order the same day (Dkt.102).

5. On January 11, 2016, the defense's code expert received a password protected disc from the FBI ostensibly containing the NIT data. The expert made a preliminary assessment of that data on January 12 and then notified defense counsel that the data was incomplete. The same day, defense counsel emailed the Government, identified the missing information, and requested its production.

6. The Government notified the defense on January 13, 2016, that it will not disclose the missing NIT data.

7. Despite engaging in discovery conferences and discussing the subject matter of this discovery motion with opposing counsel, we have been unable to reach agreement on resolution of the defense's requests for additional discovery.

DATED this 14th day of January, 2016.

s/ Colin Fieman
Colin Fieman
Assistant Federal Public Defender